

REMARKS

The courtesy of Examiner Jain in granting a telephone interview on January 15, 2009 to attorney Edward Callan is sincerely appreciated. During the interview the arguments presented herein with respect to claims 9 and 10 were discussed. The Examiner's response to such arguments is discussed below with reference to the traversal of the claim rejections under 35 U.S.C. 103. No agreement was reached as to the allowability of the claims.

Claim 10 is amended to meet the rejection thereof under 35 U.S.C. 112, second paragraph. Support for this amendment is provided in paragraph 41 of the Specification.

Election/Restrictions

The withdrawal of the restriction requirement is sincerely appreciated.

Claim Rejections - 35 U.S.C. 112

The rejection of claim 10 under 35 U.S.C. 112, second paragraph, is met by the amendment of claim 10.

Claim Rejections - 35 U.S.C. 103

The rejection of claims 9-16 under 35 U.S.C. 103(a) as being unpatentable over Maggenti et al. in view of Crocker et al. and further in view of Bensimon et al., is respectfully traversed for at least the following reasons:

The methods defined by claims 9 and 10 are not obvious over Maggenti in view of Crocker and Bensimon because the teachings of these three references would not have motivated a person of ordinary skill in the art to modify the communication network described by Maggenti in such a manner as to arrive at a communication method having the features recited in either or both of claims 9 and 10.

Maggenti teaches providing PTT services in a communication network. However Maggenti neither teaches nor suggests any motivation for providing PTT communications between PTT members of *different communication networks* that are respectively operated by *different operators*, as required by each of independent claims 9 and 10.

Crocker discloses a single communication network operated by a single operator, with presence-based services being facilitated by a presence server that may be a server for PTT communications. However, Crocker neither teaches nor suggests providing communications between members of an existing communication session within one network and a group of members of another communication network, nor does this reference provide any motivation for doing so. Even more significant is that Crocker does not disclose nor suggest providing communications between members of *different communication networks* that are respectively operated by *different operators*, as required by each of independent claims 9 and 10.

Bensimon describes subscription sharing between a plurality of radiotelephone terminals of a radiotelephony network, wherein time slots for accessing the network are allocated to each terminal by sending a synchronization message to each terminal to synchronize the application servers of the respective terminals in accordance with the allocation of the time slots. However, Bensimon does not appear to describe or suggest either (a) any interaction between *different* communication networks that are respectively operated by *different operators*, or (b) synchronizing push-to-talk (PTT) application servers of *different* communication networks, as required by each of independent claims 9 and 10.

The arguments set forth in the four preceding paragraphs were presented during the telephone interview. The Examiner responded thereto by pointing out that in *KSR International Co. v. Teleflex Inc. (KSR)*, 550 U.S. at ___, 82 USPQ2d 1385, the Supreme Court held that the teaching, suggestion and motivation (TSM) test applied in these points of argument was not the *only* test for proving obviousness. It should be pointed out that Applicants are not making only a TSM argument. There are abundant bases for arguments for patentability under other than and in addition to TSM tests.

In *KSR*, the Court stated that obviousness may be proven by finding that there was a reason for combining the elements of the claim in the manner claimed. In pointing out other tests for obviousness, the Court made the following statements:

- “One of the ways in which a patent’s subject matter can be proved obvious is by noting that there existed at the time of invention a *known problem* for which there was an obvious solution encompassed by the patent’s claims” (emphasis added).
- “Under the correct analysis, any *need* or *problem* known in the field of endeavor at the time of invention and addressed by the patent can provide a reason for combining the elements in the manner claimed” (emphasis added).
- “When there is a *design need or market pressure to solve a problem* and there are a *finite number of identified, predictable solutions*, a person of ordinary skill has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product not of innovation but of ordinary skill and common sense. In that instance the fact that a combination was obvious to try might show that it was obvious under sec 103” (emphasis added).

Earlier in the opinion, the Court stated:

- “Often, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of *demands known to the design community or present in the marketplace*; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an *apparent reason* to combine the known elements in the fashion claimed by the patent at issue. To facilitate review, *this analysis should be made explicit*. See *In re Kahn*, 441 F. 3d 977, 988 (CA Fed. 2006) (“[R]ejections on obviousness grounds cannot be sustained by mere *conclusory* statements; instead, *there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness*”). As our precedents make clear, however, the analysis

need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ” (emphasis added).

Even within the broader criteria for determining obviousness set forth in the *KSR* opinion, the Examiner has not articulated explicit reasoning with rational underpinning to support his conclusion of obviousness.

The Examiner’s reason in support of his conclusion of obviousness, was that it “would have been obvious for one of ordinary skill in the art at the time the invention was made to modify Maggenti to incorporate a group of an additional communication network operated by a second network operator, using a Push-to-Talk over a communication system (PoC) application server, and also identifying the PoC application server of the additional group as taught by Crocker, for the purpose of enhancing the feasibility and versatility of the wireless communication system by increasing the number of devices utilized and the number of servers.” This is a conclusory statement and is not a clear articulation of apparent reasons why the claimed invention would have been obvious.

The purpose (asserted by the Examiner) “of enhancing feasibility and versatility of the wireless communication system” is vague rather than explicit and it is not supported by any finding by the Examiner (in accordance with any of the broader criteria elucidated in the *KSR* opinion) of a reason for supporting a determination of obviousness. The Examiner has not explained why “enhancing feasibility and versatility” would have been an “apparent reason” for modifying Maggenti’s communication system to incorporate an additional network operated by a different operator than the operator of Maggenti’s system.

In addition, the Examiner’s assertion of obviousness is *not* supported by the teachings of the applied references because not all of the features attributed to Crocker and Bensimon by the Examiner are taught by these two references.

The Examiner's assertion that Crocker generally teaches "a group of an additional communication network operated by a second network operator" is not supported by Crocker because Crocker neither teaches nor suggests any interaction between *different* communication networks that are respectively operated by *different operators*.

The Examiner's assertion that Bensimon generally teaches "connecting the additional group to each of the existing groups of the session and synchronizing the application server of the additional group to the previous application server" is not supported by Bensimon because Bensimon neither teaches nor suggests either (a) any interaction between *different* communication networks that are respectively operated by *different operators*, or (b) synchronizing push-to-talk (PTT) application servers of *different* communication networks. The Examiner's use of quotes for this statement is not supported by Bensimon because there is no such statement in this reference.

The arguments set forth in the two preceding paragraphs were presented during the telephone interview. The Examiner responded to the "different operators" aspect of these arguments by asserting that because Crocker's network and Bensimon's network are operated in different environments from Maggenti's network, the respective networks necessarily were operated by different operators.

In rebuttal to this assertion by the Examiner, it is submitted that the Examiner has not explained why the environments in which the respective networks of Maggenti, Crocker and/or Bensimon are such that a single operator could not operate a single network combining the push-to-talk services, the facilitation of presence-based services and synchronization of shared subscriber services respectively taught by these three references. An example of two of these services being combined in a single network is described in paragraph [0017] of Crocker, which states, "presence server 161 may represent multiple servers each for individual services such as IM and/or push-to-talk...."

Claims 9 and 10 each require the provision of push-to-talk (PTT) communications between PTT members of *different communication networks* that are respectively operated by *different operators*, and the use of PTT application servers in each network.

Although Maggenti describes providing PTT services in a communication network, Maggenti does *not* suggest any motivation for providing PTT communications between PTT members of *different communication networks* that are respectively operated by *different operators*.

Claims 9 and 10 further require the additional features of connecting PTT member groups of the different communication networks and synchronizing the PTT application servers of the different networks. Maggenti does not suggest any motivation for modifying the PTT services provided over Maggenti's communication network to include these "connecting" and "synchronizing" features additionally required by claims 9 and 10.

Inasmuch as Crocker does not describe or suggest any interaction between different communication networks that are respectively operated by different operators, Crocker likewise does not suggest any motivation for modifying the PTT services provided over Maggenti's communication network to include these "connecting" and "synchronizing" features additionally required by claims 9 and 10.

Inasmuch as Bensimon does not describe or suggest any interaction between different communication networks that are respectively operated by different operators, Bensimon likewise does not suggest any motivation for modifying the PTT services provided over Maggenti's communication network to include these "connecting" and "synchronizing" features additionally required by claims 9 and 10.

Further, with regard to independent claim 10, the Examiner's agreed during the interview that Crocker does not disclose "identifying the PoC application server of the additional group by an address derived from a group address assigned to the additional group," as required by amended claim 10. The Examiner stated that a further search directed to this feature would be required.

Regarding claims 11 and 12, which depend from claims 10 and 9 respectively, Bensimon does not teach that the synchronization of the time slots is carried out automatically, as required by these claims. In paragraph [0021], cited by the Examiner, Bensimon states that "each application server is synchronised with the synchronisation servers by sending a synchronisation message from the synchronisation servers to each application server." This does not meet the limitations of claims 11 and 12.

Regarding claims 13 and 14, which depend from claims 10 and 9 respectively, Bensimon does not teach that "the synchronization is carried out whenever a user requests update of all group members of the PoC groups before sending a PoC message," as required by claims 13 and 14. Bensimon does not discuss updating synchronization whenever a user requests an update of all members of a group before sending a message. In paragraph 23, cited by the Examiner, Bensimon merely discloses allocation by a synchronization server to a terminal of a data transmission time for exchanging data with an application server when the terminal is in a time slot where it is connected to a radiotelephony network and a data transmission time is requested by the terminal from the synchronization server.

Claims 12 and 14, which depend from claim 9, are also believed to be allowable for at least the same reasons as set forth above for the allowability of claim 9.

Claims 11 and 13, which depend from claim 10, are also believed to be allowable for at least the same reasons as set forth above for the allowability of claim 10.


Claim 15 is an independent system claim. The arguments above with respect to the method claims also apply here. The cited references, in any rational combination, do not disclose or suggest a “system for push-to-talk communication between push-to-talk groups of at least two communication networks,” where the system has a common group management system and “at least one subsystem for each network operator consisting of at least one push-to-talk communication application server.” Claim 16 depends from claim 15 and is believed to be allowable for at least the same reasons as is claim 15.

Conclusion

Applicants do not necessarily agree with any of the Examiner’s comments regarding the applicability of the cited references to any of the claims. However, in view of the reasons presented herein for traversing the rejections of the claims, applicants are not presenting additional arguments at this time. Applicants reserve the right to present additional arguments for traversing the present and any future rejections of the claims.

Examination and allowance of claims 9-16 are respectfully requested.

Respectfully submitted,
Stephan BLICKER et al.

By: 
Lawrence A. Maxham
Attorney for Applicant
Registration No. 24,483

The Maxham Firm
Attorneys At Law
9330 Scranton Road, Suite 350
San Diego, California 92121
Telephone: (858) 587-7659
Facsimile: (858) 587-7658